

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:04

PLR-139346-15

Date:

May 20, 2016

Re:

LEGEND

Decedent =

Spouse =

Date 1 =

Date 2 =

Trust =

Marital Trust =

Law Firm =

Attorney A =

Attorney B =

Dear :

This letter responds to your authorized representative's letter of November 30, 2015, and other submissions, requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make a qualified terminable interest property (QTIP) election under § 2056(b)(7) of the Internal Revenue Code.

The facts and representations submitted are as follows. Decedent executed a trust (Trust) on Date 1 that became irrevocable at his death. Decedent died on Date 2. He was survived by Spouse.

Item Two, Part C, of Trust provides, in part, that, on Decedent's death, the balance of

the assets of the Trust estate which would qualify for the unlimited marital deduction is to be set apart as a separate trust (Marital Trust) for the benefit of Spouse.

Under Item Two, Part C, Section 1, all of the net income of the Marital Trust is to be paid to Spouse at least quarterly. Principal may be paid to Spouse in such amounts as the trustees deem appropriate to provide for her health, support or maintenance. In addition, Spouse may request principal in amounts not to exceed, in any one calendar year, the greater of five thousand dollars or five percent of the aggregate value of the Marital Trust principal.

Under Item Two, Part C, Section 2(b), on Spouse's death, the assets remaining in the Marital Trust are to be distributed to such of Decedent's descendants as Spouse may appoint by will.

Spouse is the executor of Decedent's estate. She engaged Law Firm to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Decedent's estate. Attorney A directly supervised and oversaw the preparation of the return. Throughout the preparation, Attorney B was involved with and consulted about various issues from time to time. On Schedule M, the value of the property that passed to the Marital Trust was listed as QTIP property, but no QTIP election was made for this property.

You have requested an extension of time under §§ 301.9100-1 and 301.9100-3 to make a QTIP election under § 2056(b)(7) to treat the Marital Trust as QTIP property.

LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term "qualified terminable interest property" as property: (I) which passes from the decedent; (II) in which the surviving spouse has a

qualifying income interest for life as defined in § 2056(b)(7)(B)(ii); and (III) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such an election, once made, shall be irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001. For purposes of this paragraph, the term “return of tax imposed by § 2001” means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In the present case, the Marital Trust was created for the benefit of Spouse. Although it was identified on Schedule M, the return failed to indicate a QTIP election for the Marital Trust property.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor of Decedent's estate is granted an extension of time of 120 days from the date of this letter to make a QTIP election with respect to the Marital Trust.

The election should be made on a supplemental Form 706 filed with the Cincinnati

Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

Leslie H. Finlow

Leslie H. Finlow
Senior Technician Reviewer, Branch 4

Enclosure
Copy of letter for § 6110 purposes

cc: